

## REMARKS

Prior to the present response, claims 1-19 were pending. By the present response, claims 1, 8, and 14 are amended, and new claims 20-28 are added to round out the coverage. Accordingly, claims 1-28 currently are pending in this application. In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested.

The Office has maintained the rejection of claims 1-19 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,466,915 to Suzuki et al. Applicants traverse this rejection insofar as the Office may consider it to apply to the claims as presently amended, as the Suzuki et al. patent fails to describe a number of features set forth in amended independent claims 1, 8 and 14.

With respect to independent claims 1, 8 and 14, page 2 of the action includes statements asserting that Figure 1 of Suzuki et al. discloses a monitoring system (i.e., center 100) that monitors the purchase of articles of goods at an electronic terminal 200, that the electronic terminal 200 of Suzuki et al. corresponds to the claimed “first device,” and that a “manner of consumption” of digital content includes viewing pages of data on the terminal 200 for articles that can be purchased. It is respectfully submitted, however, that the Suzuki et al. patent fails to describe the system and processes as presently claimed. For instance, Suzuki et al. does not describe a system including *inter alia* a first device having “digital content storage that stores digital content files” and “a monitoring system that monitors, at the first device, consumption of digital content of a file selected from the digital content storage, and generates usage data based on one or more usage events and indicative of the manner in which the digital content is consumed,” as recited in amended claim 1. Suzuki et al. also does not describe the steps of “storing at least one digital content file in memory of a first device,” “monitoring, by the first device, consumption of digital content of the stored digital content files, which are selected from the digital content storage for consumption,” and “at the first device, generating usage data, based on one or more usage events and indicative of the manner in which the digital content is consumed,” as set forth in claims 8 and 14.

Rather, information data being viewed by a user of the Suzuki et al. system is transmitted from the center 100 and is not selected from storage at the terminal 200. That is, in the Suzuki et al. system, the device (i.e., terminal 200) for view information is not the same device (i.e., the center 100) that stores digital content files that are selected and consumed. Hence, the Suzuki et al. patent does not disclose “storing at least one digital content file in memory of a first device,” “monitoring, at the first device, consumption of digital content of the stored digital content files, which are selected from the digital content storage for consumption,” as recited in the context of claim 1, and the similar subject matter set forth in claims 8 and 14.

Additionally, as the Office correctly acknowledges, a monitoring system and monitoring operation in the Suzuki et al. system are respectively located in, and performed by the center 100. Thus, Suzuki et al. does not disclose a first device comprising “a monitoring system that monitors, at the first device, consumption of digital content . . . ,” as recited in claim 1, and the feature of “monitoring, by the first device, consumption of digital content . . . ,” as recited in claims 8 and 14.

Claim 1 also recites, among other things, the feature of “a usage metrics system at a second device remote from the first device that receives stored usage data and processes the usage data to provide inference results,” and claims 8 and 14 recite the steps of “transmitting the stored usage data to a second device remote from the first device” and “processing the usage data to provide inference results.” This “usage data,” which is received and processed at a second device, is data generated by monitoring digital content consumption at the first device from digital content selected from storage at the first device. As pointed out above, the Suzuki et al. patent does not describe a system and method in which digital content consumption is monitored at a same device used to store digital content files containing the digital content. As such, Suzuki et al. does not describe the “usage metrics system,” as recited in claim 1, and the steps of “transmitting” and “processing,” as recited in claims 8 and 14.

It is noted that column 17, lines 41-59 of Suzuki et al. discloses using data in an order reception file to derive a “customer’s tendency” from lists of articles selected and

bought by the customer. Hence, the system of Suzuki et al. is operative to produce inference results based on the data stored in the order reception files. However, the fundamentally different way in which the on-line shopping system of Suzuki et al. generates and collects data from the present invention is not a trivial distinction because it allows for advantageous features not provided by the Suzuki et al. system. For instance, it is not necessary in applications of the present invention for a user to be connected on-line to generate and store usage data. Consequently, a historical record can be stored in a device used for consumption of digital content, such as audio, video, text or software code, and upload at a later time, at predetermined times, or upon the occurrence of particular events.

For example, paragraphs 0041 and 0042 of Applicants' specification describe an exemplary case in which usage data pertaining to audio digital content is analyzed by a usage metrics system to draw conclusions about a consumer's preferences and/or habits, such as a what particular type of music, listening patterns, particular artists or particular songs the consumer prefers. Such digital content can be stored in and consumed using an MP3 Player, for example, which allows a user to download and store audio files, and select a stored file for consumption. Because this type of "first device" used to consume digital content also stores consumable digital content files locally, performs localized monitoring of digital content consumption and localized generation and storage of data indicating a manner in which digital content is consumed, the present invention allows for creating historical usage data in the device. In this way, usage data can be collected after a period of time in which the user is not in contact with either an intermediate storage device or a second device to which the usage data is transmitted for processing. Additionally, the present invention can monitor consumption of a wide range of consumable digital content types, such as text, e-books, video, multimedia, pictures, executable code, software or any combination thereof, stored in storage of the device (e.g., see paragraph 0019 of Applicants' specification). Also, in addition to audio playing devices, the present invention can measure consumption of digital content stored in other devices, such as PDA's, personal computers, notebook computers, mobile phones or televisions (e.g., see paragraph 0009). The present invention thus allows for continuous monitoring of consumption of digital content already in possession of the user, and a wide spectrum of types of digital content. By contrast, the Suzuki et al. system collects data only while a customer using a terminal is communicating on-line with a

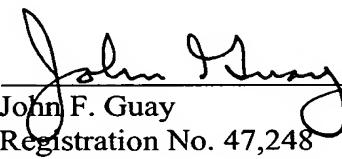
center, is limited to goods being viewed and selected for purchase while on-line with the center, and does not mention consumption of digital content selected from storage containing digital content files at the terminal.

For at least these reasons, the Suzuki et al. patent does not teach or suggest the invention as presently claimed in independent claims 1, 8 and 14. The remaining rejected claims 2-7, 9-13 and 15-19, and new claims 20-28, each depend from one of independent claims 1, 8 and 14, and are therefore allowable at least for the above reasons, and further for the additional features recited.

In view of all of the foregoing, Applicants submit that this application is now in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

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